IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL SIDE JURISDICTION
WRIT PETITION NO.2739 OF 2005

Arun Gulab Gavali,)
Member of Legislative Assembly,)
aged about 53, residing at Gitai,)
Dagadi Chawl, Byculla (West),)
Mumbai - 400 011.).. Petitioner

Vs.

1. The State of Maharashtra,)

2. Director General of Police,)
having his office at Old)
Council Hall, Mumbai.)

3. Commissioner of Police,)
Greater Mumbai, having his)
office Opposite Crawford Market,)
Mumbai - 400 001.).. Respondents

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Shri P.M.Pradhan for the Petitioner.

S/Shri S.R.Borulkar, Public Prosecutor with D.S.Mhaispurkar, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
R.S.MOHITE, JJ.

DATED : 21ST DECEMBER, 2005.

ORAL ORDER (Per R.M.S.Khandeparkar, J)

1. Heard. By the present petition, the petitioner is seeking relief in the nature of direction to the respondents to record statements of

the petitioner in the presence of his advocate and medical officer and further to prohibit the respondents from undertaking Narcotic Analysis Test, lie detector test or a brain mapping test on the petitioner as well as to withdraw the notice dated 16th November, 2005 issued for taking the petitioner to Bangalore.

2. The contention of the petitioner is that there is no procedure contemplated under the provisions of the Code of Criminal Procedure to compel a witness to undergo Narcotic Analysis Test. Besides, as such test involve injection of certain solution in the body of the witness, there is a possibility of invasion of some other disease in the body of the petitioner if he is compelled to undergo such test. It is also the contention of the petitioner that the respondents cannot compel the witness to be taken to different places in the course of investigation and cannot be compelled to attend laboratory at Bangalore for the purpose of Brain Mapping Test or Lie Detector Test as it would be violative of his fundamental right assured under Article 21 of the Constitution of India. Simultaneously, the petitioner states that he is ready and willing to assist the police for recording any of his statements and assures to cooperate with the

police in the matter of investigation in relation to which he is proposed to be subjected to such tests.

3. The learned advocate appearing for the petitioner drawing attention to the decision of the Apex Court in **Prabhu Dayal Deorah v. The District Magistrate, Kamrup & Ors.,** reported in (1974) 1 SCC 103 and particularly to paragraph 21 thereof, submitted that subjecting a witness to such test would violate a personal liberty assured to the witness under Article 21 of the Constitution. He also further submitted that any admission or any statement in the nature of confession being made or disclosed or revealed in the course of investigation by adopting such procedure, then it would amount to obtaining a confession from the person in relation to the alleged offence in respect of which the investigation is being carried out and such confession would not be admissible and could not be relied upon, and from that angle also apart from such procedure being a futile exercise, it would also violate the constitutional guarantee under Article 21 of the Constitution.

4. The learned Public Prosecutor appearing for the Respondents, on the other hand, drawing attention to the statement on behalf of the respondents in their

affidavit that at the moment, there is no proposal to carry out Narco Analysis Test and only Brain Mapping and Lie Detector Tests would be conducted in relation to the petitioner, sought to rely upon a decision of the Division Bench of this Court in **Ramchandra Ram Reddy & Ors. v. State of Maharashtra,** reported in 2004 ALL MR (Cri) 1704 and submitted that all the contentions sought to be raised while challenging the authority of the respondents to conduct such tests have been settled by the said decision and it has been clearly held that the result of Brain Mapping and Lie Detector Tests does not amount to a statement and further that neither of those tests are violative of any right guaranteed under Article 20(3) of the Constitution of India. According to the learned Public Prosecutor, such tests in no way violate the fundamental right guaranteed under Article 21 of the Constitution of India, as the tests are conducted in the course of investigation in relation to a crime or an offence and the investigating machinery is entitled to undertake scientific test in order to identify a guilty person and to collect the necessary evidence in the course of the investigation.

5. As regards the relief in relation to a direction against Narco Analysis Test, indeed, the

respondents in their affidavit have clearly stated that "So far Narco Analysis Test has not even been suggested." Evidently, it is too premature for the petitioner to seek any relief in relation to Narco Analysis Test on the petitioner. The statement about the fact that the Narco Analysis Test on the petitioner has not even been thought of at this stage having been made on oath in the affidavit, we have to accept the same, and therefore, the question of issuing any direction as such to the respondents in that regard does not arise at all.

6. As regards the Brain Mapping and Lie Detector Tests, the Division Bench of this Court had clearly held in **Ramchandra Ram Reddy's case (supra)** that in our opinion administration of these tests against the will of the person to whom it is sought to be administered does not violate any constitutional guarantee as in the first two cases it is not a statement and that it is not incriminatory in any manner. Apparently, the contention regarding violation of the constitutional guarantee in cases of a person being subjected to Brain Mapping Test or Lie Detector Test stands rejected and the law on the point stands concluded by the said decision. Undoubtedly, it has been informed that the matter is in appeal

before the Apex Court. However, it is not disputed that there is no stay granted by the Apex Court in relation to the said decision by the Division Bench. Being so, at this stage, suffice to observe that the law as declared by this Court in relation to the said tests in **Ramchandra Ram Reddy's case (supra)** holds the field, and being so, as far as those two tests are concerned, there is no substance in the grievance of the petitioner. Therefore, the question of granting any relief contrary to the said decision to the petitioner in the case in hand in relation to the said tests does not arise.

7. Undoubtedly, on behalf of the petitioner, it is sought to be contended that the said decision does not relate to constitutional guarantee under Article 21 of the Constitution, and in that regard, the decision of the Apex Court in **Prabhu Dayal Deorah's case (supra)** was referred to and more particularly the paragraph 21 thereof. The said paragraph reads thus:-

> "21. The facts of the cases might induce mournful reflection how an honest attempt by an authority charged with the duty of taking prophylactic measures to secure the maintenance of supplies and services essential

to the community has been frustrated by what is popularly called a technical error. We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law. The need today for maintenance of supplies and services essential to the community cannot be over-emphasized. There will be no social security without maintenance of adequate supplies and services essential to the community. But social security is not the only goal of a good society. There are other values in a society. Our country is taking singular pride in the

> democratic ideals enshrined in its constitution and the most cherished of these ideals is personal liberty. It would indeed be ironic if, in the name of social security, we would sanction the subversion of this liberty. We do not pause to consider whether social security is more precious than personal liberty in the scale of values, for, any judgment as regards that would be but a value judgment on which opinions might differ. But whatever be of impact on the maintenance of supplies and services essential to the community, when a certain procedure is prescribed by the Constitution or the laws for depriving a citizen of his personal liberty, we think it our duty to see that that procedure is rigorously observed, however strange this might sound to some ears."

9. The ruling of the Apex Court therein was essentially in relation to impact on the maintenance of supplies and services essential to the community and when a certain procedure is prescribed by the Constitution or the law for depriving a citizen of his personal liberty, that procedure so prescribed has to be rigorously observed. The expression "procedure"

prescribed under Article 21 of the Constitution has been the subject matter of various decisions and the view which is taken and the law on the point in that regard which is settled by the decisions is that the expression "procedure which is prescribed" is not only under the constitution or statutory laws but even by the law as declared by the Apex Court and this High Court. Once this High Court has declared that such tests do not violate personal liberty on account of a person being subjected to such tests and consequent to such decision if a person is subjected to such tests, it would amount to being subjected to such test in accordance with the procedure prescribed. Considering the same, the contention sought to be raised with reference to Article 21 of the Constitution is devoid of substance.

10. As regards the prayer relating to the direction against taking the petitioner to Bangalore, it is to be noted that the investigating machinery is duly empowered to secure presence of any person having knowledge of an offence under investigation, either directly or indirectly, or having knowledge of the facts which could assist the investigating machinery to unearth the necessary facts disclosing the evidence in support of the accusation against any person being

involved in the offence or in relation to the offence itself and being so, it eventually follows that the investigating machinery can require even a witness to appear at different places where the investigation or part of investigation is required to be carried out. Ofcourse, any expenditure incurred in such appearance of the witness, it will have to be provided by the investigating machinery. But it cannot be said by any person called for assisting the investigating machinery that he would dictate his terms regarding his appearance before the investigating machinery or that he could refuse to accompany the investigating machinery to a particular place or that investigation should be carried out at a particular place alone. It will be entirely in the discretion of the investigating machinery to deal with this aspect depending upon the facts and circumstances of each case and persons called upon to assist the investigating machinery in the course of investigation of an offence will have to assist the investigating machinery in that regard, and such assistance cannot be said to amount to denial of personal liberty. It is a duty of every person having knowledge or information regarding the offence to assist the investigating machinery. In fact, that is the essence of Sections 160 and 161 of the Code of Criminal

Procedure. Being so, the question of directing the respondents to forthwith withdraw the notice dated 16th November, 2005 for taking the petitioner at Bangalore does not arise at all.

11. As regards the request for presence of the advocate and medical officer at the time of recording of statement of the petitioner, the learned advocate for the petitioner has not pressed for any order in that regard.

12. For the reasons stated above, therefore, there is no case for interference in the matter for issuance of any sort of direction to the respondents. Hence, the petition fails and is hereby rejected.

13. At this stage, the learned advocate for the petitioner prays for continuation of the interim relief granted earlier. The request for continuation of interim relief is strenuously opposed on behalf of the respondents contending that it will hamper investigation in the matter. The learned advocate for the petitioner has also stated that while disposing the matter in **Ramchandra Ram Reddy's case (supra)**, the Division Bench has also granted stay for a period of eight weeks.

14. Undoubtedly, in **Ramchandra Ram Reddy's case (supra)** on pronouncement of the judgment, the decision was stayed for a period of eight weeks. However, at the same time, fact remains that when a party approached the Apex Court, it could not obtain any interim relief for continuation of such stay. In other words, at this stage, the law declared in **Ramchandra Ram Reddy's case (supra)** is in force. Considering the same and as submitted by the learned Public Prosecutor for the respondents, we do not find it justifiable to continue the interim relief granted earlier. Hence, the request for continuation of interim relief is rejected.

15. Certified copy be expedited.

(R.M.S.KHANDEPARKAR, J)

(R.S.MOHITE, J)